ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, JUDGE

DIVISION II

CACR07-692

MILTON DONELL WOFFORD — February 6, 2008

APPELLANT

V.

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT
[NO. CR2006-3516]

STATE OF ARKANSAS

HON. BARRY SIMS,
CIRCUIT JUDGE

APPELLEE

AFFIRMED

Milton Donell Wofford was convicted in a Pulaski County jury trial of attempted rape, and he was sentenced to 360 months' imprisonment in the Arkansas Department of Correction. On appeal, Wofford argues that the trial court erred in denying his directed-verdict motion because the State failed to introduce substantial evidence that he engaged in conduct that constituted a substantial step in a course of conduct intended to culminate in sexual intercourse with a person less than fourteen years of age. We affirm.

A motion for a directed verdict is treated as a challenge to the sufficiency of the evidence. *Mitchem v. State*, 96 Ark. App. 78, 238 S.W.3d 623 (2006). When a defendant challenges the sufficiency of the evidence, we review the evidence in the light most favorable

to the State, considering only the evidence that supports the guilty verdict, and will affirm the conviction if it is supported by substantial evidence. *Id.* Evidence is substantial, whether direct or circumstantial, if it is of sufficient force and character that, with reasonable certainty, it will compel a conclusion one way or the other and pass beyond mere speculation or conjecture. *Id.* Under our criminal code, in pertinent part, a person commits rape "if he or she engages in sexual intercourse or deviate sexual activity with another person who is less than fourteen years of age." Ark. Code Ann. § 5-14-103(a)(3)(A) (Repl. 2006). A person attempts to commit rape if he purposely engages in conduct that constitutes a substantial step in a course of conduct intended to culminate in the commission of rape. Ark. Code Ann. § 5-3-201 (Repl. 2006).

In challenging the sufficiency of the evidence, Wofford cites *Summerlin v. State*, 296 Ark. 347, 756 S.W.2d 908 (1988), for the proposition that proof of a defendant's intention to commit rape may be ascertained from acts or words connected with his assault on the victim and "some overt act toward the accomplishment of sexual intercourse with the victim." Extrapolating from cases in which a verbally-stated intention to rape the victim was held to be sufficient, Wofford asserts that because the State failed to introduce evidence that he ever stated to CR that he intended to have sexual intercourse with her or that he ever touched his penis to CR's vagina or breasts, the evidence in this case is insufficient. We disagree.

In the first place, the essence of Wofford's argument relies on a logical fallacy, i.e., that if the appellate courts of this state have found certain evidence sufficient then that is the

only evidence that may satisfy the State's burden. However, the broad holding in *Summerlin* is that we are not limited to acts that have previously been identified in our case law as conduct sufficient to establish that a perpetrator has purposely engaged in activity that constitutes a substantial step toward the commission of rape. We hold that there was sufficient proof of other acts that constitute the requisite purposeful conduct.

The victim, CR, testified that she and her cousin, AR, were less than fourteen years of age when her great uncle, Wofford, and another man invited them to get something to eat. After dropping off the other man, Wofford took the girls to a truck-stop parking lot where he had his tractor-trailer parked. The truck was equipped with a sleeping compartment with bunk beds. Wofford invited the girls into the truck and played a pornographic movie. According to CR, the girls refused to watch the movie and kept their heads under the covers in the bunk beds. Wofford then pulled the covers off and told them he was going to have to kill them because he knew that they would tell their mothers. He climbed up onto the top bunk with the girls. Because it was a small space, Wofford laid partially on top of the girls. AR pushed him off and left the truck, saying that she was going to the bathroom. Subsequently, Wofford unbuttoned CR's pants and unbuckled his belt. CR began kicking and scratching and Wofford fell out of the bed. She jumped down to exit the compartment. Wofford snatched the bottom of her pants, pulling them off. As she ran across the parking lot, she encountered a man who told her to stay with him while he called the police.

The man that CR spoke about was John Intel, a security guard at the truck stop. His testimony corroborated CR's account of her escape. He stated that CR was very scared and

excited, and was wearing only a t-shirt and panties. According to Intel, Wofford approached him and said that he was just getting his niece back. Intel stated that CR screamed and squeezed him each time Wofford took a step closer. Intel told Wofford that if he did not stop, he would shoot him. Wofford then tossed him CR's pants. He watched Wofford until North Little Rock police arrived.

AR also corroborated CR's account of the incident. She stated that when Wofford climbed onto the top bunk where the girls were lying, he lay on CR. AR got off the bunk when she saw Wofford "go into [CR's] pants." AR saw CR crying as AR left the truck and ran to the nearest gas station, losing her flip-flops in the process. At the gas station, AR encountered a lady whom she told that Wofford was trying to rape her cousin.

Police investigator Mike Bayed testified that Wofford admitted that he had a pornographic movie in his rig, but claimed that he played it at the girls' request. Bayed recovered the DVD case for a pornographic movie in the sleeping compartment, along with a pair of girl's flip-flops. Additionally, there was testimony from Cynthia Robinson, Wofford's thirty-year-old niece, who stated that Wofford asked her to have sex with him when she was twelve.

We believe that the foregoing testimony about Wofford playing a pornographic movie, lying on top of his victim, removing the victim's pants, unbuckling his own belt, and generally behaving in a way that was interpreted by AR as an attempt to rape CR, constitutes substantial evidence of an overt act undertaken toward the accomplishment of sexual

intercourse with the victim. We hold, as did the court in *Summerlin*, that "actions speak louder than words."

Affirmed.

HEFFLEY and MILLER, JJ., agree.